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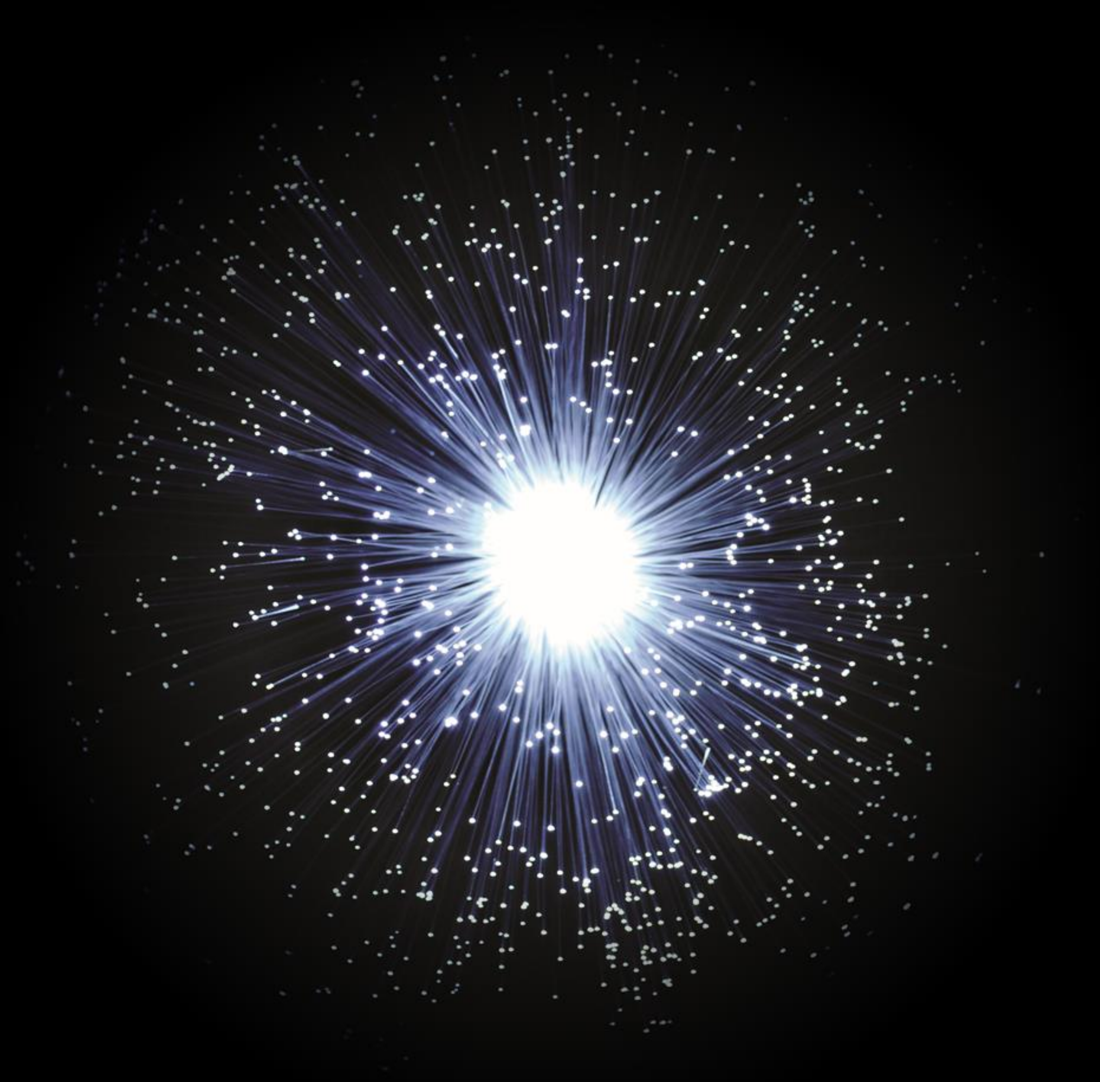

Global Tax Developments Quarterly

Accounting for Income Taxes

Summary of recent international tax developments that may have implications on accounting for income taxes under US GAAP

March 31, 2022–June 30, 2022
July 19, 2022

Issue 2022-2

MAKING AN IMPACT THAT MATTERS since 1845

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Introduction

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Unless otherwise indicated, the content in this document is based on information available as of June 30, 2022. Accordingly, certain aspects of this document may be updated as new information becomes available. Financial statement preparers and other users of this document should take actions to remain abreast of and carefully evaluate additional events that may be relevant to accounting for income taxes matters.

Applicable US GAAP guidance

Under US GAAP, the effects of new legislation are recognized upon enactment. More specifically, the effect of a change in tax laws or rates on a deferred tax liability or asset is recognized as a discrete item in the interim period that includes the enactment date. The tax effects of a change in tax laws or rates on taxes currently payable or refundable for the current year are reflected in the computation of the annual effective tax rate after the effective dates prescribed in the statutes, beginning no earlier than the first interim period that includes the enactment date of the new legislation. However, any effect of tax law or rate changes on taxes payable or refundable for a prior year, such as when the change has retroactive effects, is recognized upon enactment as a discrete item of tax expense or benefit for the current year. While there is no specific guidance as to what constitutes "enactment" under US GAAP, it is commonly accepted that enactment takes place on the date the last step in the legislative process required to promulgate the law is complete (e.g., a law is published in an official gazette, signed by a president, or receives Royal Assent).

Enacted Tax Law Changes: April 1, 2022 to June 30, 2022

The following section includes a summary of major international income tax law changes enacted during the period April 1, 2022 to June 30, 2022.

Greece

Business growth incentives encourage collaborations and corporate transformations

Date of Enactment: May 24, 2022
Effective Date: May 26, 2022

On May 24, 2022, the Greek parliament passed Law 4935/2022, "Incentives for business growth through collaborations and corporate transformations and other provisions," which introduces, inter alia, the following measures:

- A new tax regime for corporate transformations.
- A new tax regime for "collaborations of persons;"
- Specific provisions for the deduction of expenses related to the acquisition of shares; and
- Certain amendments to Development Laws 1297/1972, 2166/1993, and 4172/2013.

The legislation was published in the government gazette on May 26, 2022 and applies as from that date.

See also tax@hand - May 30, 2022

Hong Kong

Tax reduction measure proposed in 2022-23 budget enacted

Date of Enactment: April 14, 2022
Effective Date: January 1, 2022

The Revenue (Tax Concessions) Bill 2022 was passed by Hong Kong's Legislative Council on April 6, 2022, giving effect to the one-off 100% tax reduction for profits tax, salaries tax, and tax under personal assessment for the year of assessment 2021-22, subject to a ceiling of HKD 10,000 in each case.

The one-off tax reduction will be reflected in taxpayers' final tax payable for the year. Taxpayers who have filed or will file tax returns for 2021-22 will see the reduction in the relevant assessment issued by the Inland Revenue Department.

See also tax@hand - April 11, 2022

Malaysia

Exclusion of foreign-source income from computation of "Cukai Makmur" legislated

Date of Enactment: April 5, 2022
Effective Date: Year of Assessment 2022

On April 5, 2022, the Malaysian government gazetted the "Income Tax (Exemption) Order 2022" (P.U.(A) 96/2022) to legislate the exclusion of foreign-source income from the calculation of the special one-off tax known as the "Cukai Makmur" that applies to certain companies with chargeable income exceeding MYR 100 million in the basis period for year of assessment (YA) 2022; the exclusion was announced by the Ministry of Finance (MOF) via a media release on December 30, 2021 (available in the Bahasa Malaysia language only). The order is effective for YA 2022 and is relevant to resident companies that receive income in Malaysia from outside of Malaysia as from July 1, 2022.

See also tax@hand - April 20, 2022

Rules issued on extension of Principal Hub Incentive Scheme

Date of Enactment: May 24, 2022
Effective Date: Year of Assessment 2021

On May 24, 2022, the Malaysian government gazetted the "Income Tax (The Principal Hub Incentive Scheme) Rules 2022" (P.U.(A) 164/2022) to implement the extension of the tax incentive for "principal hubs" for two years (i.e., to be available for applications received up to December 31, 2022), as proposed in the 2021 national budget. The extension aims to encourage more companies to establish a center in Malaysia to conduct their regional or global businesses and operations to manage, control, and support their key functions including management of risks, decision making, strategic business activities, commerce, finance, management, and human resource management. There have been some revisions to the incentive, which provides for a corporate income tax rate of 0% to 10% for certain income of qualifying companies for a period of five consecutive years of assessment (YAs) that is renewable for another five YAs for new companies (the general corporate income tax rate in Malaysia is 24%). The rules are effective as from YA 2021. The issuance of the rules follows the 2021 issuance by the Malaysian Investment Development Authority (MIDA) of guidelines ("PH 3.0") setting forth the eligibility criteria and conditions to qualify for the incentive.

See also tax@hand - June 3, 2022

Enacted Tax Law Changes That Are Now Effective: April 1, 2022 to June 30, 2022

The following section includes a summary of major international income tax law changes enacted before April 1, 2022, but are first effective in the period April 1, 2022, to June 30, 2022.

India

Finance Act, 2022 enacted

Date of Enactment: March 30, 2022
Effective Date: April 1, 2022

India's Finance Bill, 2022 (FB 2022) initially was presented to parliament by the finance minister on February 1, 2022. After considering representations from various stakeholders, an amended version of the bill was placed before the Lok Sabha (India's lower house of parliament) on March 24, 2022 and passed by the Lok Sabha on March 25, 2022. FB 2022, as amended, subsequently was approved by the Rajya Sabha (the upper house), and enacted as Finance Act, 2022 after receiving presidential assent on March 30, 2022. The amendments made at the FB 2022 stage modify several changes to the Income-tax Act, 1961 (ITA) proposed by FB 2022.

See also tax@hand - April 11, 2022

Ukraine

Temporary tax, currency, and labor provisions introduced

Date of Enactment: March 2022
Effective Date: April 1, 2022

Key tax, currency control, and labor regulations were introduced in Ukraine in March 2022 in response to the ongoing conflict with Russia. These regulations typically apply from announcement and are expected to remain in effect while martial law is in force in Ukraine.

As from April 1, 2022 and while martial law is in force, corporate income taxpayers with annual turnover not exceeding UAH 10 billion (approximately USD 340 million) may elect to be subject temporarily to the 2% unified tax in lieu of corporate income tax. The unified tax will be calculated based on annual income without regard to expenses or other deductions. Companies that register for the unified tax also are relieved of the requirement to accrue VAT on their supplies. As such, the unified tax effectively substitutes for both corporate income tax and VAT.

See also tax@hand - March 22, 2022

Enacted Tax Law Changes That Are Effective Beginning July 1, 2022

The following section includes a summary of major international income tax law changes enacted before April 1, 2022, but effective beginning July 1, 2022.

Per a review of jurisdictions that are generally monitored in this publication, there were no major international income tax law changes enacted before April 1, 2022, but that are first effective beginning July 1, 2022.

On the Horizon

The following developments had not yet been enacted as of June 30, 2022, but may, in certain cases, be enacted and become effective in the near future. Please follow up with your U.S. or local country tax advisor for more information.

Australia

Extension of patent box to agricultural and low emissions technology sectors proposed

One of the few substantive policy issues announced in Australia's Federal Budget 2022-23 was the expansion of Australia's proposed patent box regime (announced in the Federal Budget 2021-22) to encompass both the low emissions technology sector (as originally foreshadowed) and the agricultural sector.

The introduction of an Australian patent box regime is intended to support the onshore commercialization of innovative developments in Australia by offering a globally competitive tax rate for profits generated from eligible Australian owned and developed patents. The expansion of the proposed patent box regime for the two new sectors is intended to apply as from July 1, 2023 in respect of eligible income streams from patents issued or granted after March 29, 2022.

Following the Australian federal election on May 21, 2022 and the change in Government, Parliament has yet to resume and legislation in respect of the abovementioned expansion of the patent box regime (as announced in the Federal Budget 2022-23) has yet to be introduced.

See also tax@hand - March 30, 2022

Overview of changes to debt deduction rules proposed by new government

Following the Australian federal election on May 21, 2022, the Labor Party has formed the new government with Anthony Albanese as prime minister and Jim Chalmers as treasurer. The assistant treasurer is Stephen Jones, and Andrew Leigh is the assistant minister for competition, charities and treasury.

The new government announced a number of multinational tax measures during the election campaign (Labor's Plan To Ensure Multinationals Pay Their Fair Share Of Tax, April 27, 2022):

- Supporting the OECD Two Pillar solution;
- Limiting debt related deductions by multinationals in line with the OECD approach (intended to apply from 1 July 2023);
- Limiting the ability for multinationals to abuse Australia's tax treaties when holding intellectual property in tax havens (intended to apply from 1 July 2023); and
- Introducing various transparency and disclosure measures.

In addition, a further announcement on May 19, 2022 proposed an extension and boosting of existing Australian Taxation Office (ATO) programs (tax avoidance taskforce, black economy taskforce) resulting in additional forecast net revenue of AUD 3 billion over 2022-23 to 2025-26. This is in addition to existing ATO funding including that announced by the past government in the 2022-23 Federal Budget.

See also tax@hand – June 7, 2022

Canada

2022-2023 federal budget highlights

Canada's Deputy Prime Minister and Minister of Finance, the Honorable Chrystia Freeland, presented Budget 2022 entitled "A Plan to Grow Our Economy and Make Life More Affordable" in the House of Commons on April 7, 2022. A summary of the proposed tax measures contained in the budget is provided in the article.

See also tax@hand - April 11, 2022 and tax@hand - May 19, 2022

European Union

European Commission proposes directive to address tax-induced debt-equity bias

On May 11, 2022, the European Commission announced the release of a draft for a new directive laying down rules to address the tax-induced debt-equity bias. The proposal includes both a debt-equity bias reduction allowance (also referred to as DEBRA) in the form of a notional interest deduction on equity and a general limitation on the tax deductibility of debt-related interest payments. The initiative first was announced on May 18, 2021 by the European Commission in its Communication on Business Taxation for the 21st Century.

For the directive proposal to be adopted, member states would need unanimously to agree in the Council of the EU on the draft text. The European Parliament and European Economic and Social Committee also must be consulted and give their opinion, although this is not binding. The proposal may, therefore, be viewed as the starting point for discussions.

If adopted, EU member states would be required to transpose the directive into their domestic legislation. Currently, the implementation deadline is set at December 31, 2023, and it is proposed that member states apply the directive as from January 1, 2024.

The six member states (Belgium, Cyprus, Italy, Malta, Poland, and Portugal) that already have rules in place providing for an allowance on equity may choose to apply a "grandfathering" clause. This means that taxpayers that already benefit from a domestic allowance on equity as at the date of entry into force of the directive would be able to continue to benefit from the specific national allowance for a period of up to 10 years.

See also tax@hand - May 12, 2022

Germany

Government approves draft bill reducing interest rate on late tax payments/refunds

On March 30, 2022, the German government approved a draft bill providing for a reduced interest rate on late tax payments and refunds, which was published by the Ministry of Finance (MoF) on February 22, 2022.

The draft bill proposes a reduced interest rate of 0.15% per month (i.e., 1.8% per year) on late tax payments and refunds with retroactive effect as from January 1, 2019. The draft bill also proposes that the interest rate be evaluated every three years, with the first evaluation occurring in 2026. The draft bill notes that changes are not anticipated in any other cases (e.g., interest on deferrals, interest applied to pension accruals discounting, etc.)

See also tax@hand - April 1, 2022

Decree confirms tax-free treatment of capital repayments from non-EU subsidiaries

In a long-awaited decree dated April 21, 2022, the German Ministry of Finance (MoF) confirmed that a non-EU subsidiary may make a tax-free repayment of capital to a German corporate shareholder and setting forth related rules and documentation requirements to prove the character of such a repayment. The decree is a response to several federal tax court (BFH) decisions from 2010, 2016, and 2019, which generally aligns with the principles established by the BFH in the decisions.

The decree has been long awaited by tax practitioners and confirms the acceptance of the principles by the tax authorities as established by the BFH. This is a welcome development for taxpayers. The BFH decisions from 2010, 2016, and 2019 will be published soon in the federal tax gazette, which will mark the official recognition of these decisions by the tax authorities.

Even though the decree is a favorable development, taxpayers should not underestimate the potential complexities and documentation requirements when it comes to the tax-free character of a repayment of capital by a foreign subsidiary (irrespective of whether the subsidiary is resident in the EU or an EEA country, or outside of the EU/EEA).

See also tax@hand - April 25, 2022

MOF publishes final decree on income tax treatment of virtual currencies

On May 11, 2022, the German Ministry of Finance (MOF) published its highly anticipated final decree on the income tax treatment of virtual currency transactions. After the publication of a draft decree on June 17, 2021, the MOF held a public hearing to gather comments on the draft decree, which resulted in the final decree containing various changes from the draft decree. The final decree is binding on the tax authorities, and any measures taken by the tax authorities based on this decree must be contested in a tax court procedure.

The issuance of the final decree is a welcomed development and demonstrates the importance of this topic to the tax authorities. The final decree includes some favorable changes for taxpayers compared to the draft decree but still leaves many questions unanswered. For example, the final decree does not mention the treatment of nonfungible tokens or decentralized finance business models where clarifications from the tax authorities would be helpful for taxpayers. It remains to be seen what future positions the tax authorities will take regarding these points.

See also tax@hand - May 13, 2022

Upper house of parliament approves fourth COVID-19 tax relief bill

On June 10, 2022, Germany's upper house of parliament approved the "Fourth bill on tax relief measures relating to the COVID-19 crisis," which includes several tax measures to aid taxpayers during the ongoing pandemic. The bill is based on a draft that was published by the Ministry of Finance (MOF) on February 3, 2022 and approved by the lower house of parliament on May 19, 2022. The final bill includes some measures listed below:

- The increased loss carryback amount of EUR 10 million (for individual filers and corporations) or EUR 20 million (for joint filers), which is available for losses incurred in 2020 and 2021.
- For moveable business assets, the accelerated depreciation method that was introduced in 2020 for assets acquired in 2020 and 2021 will be extended to assets acquired in 2022.
- The reinvestment period that allows for tax-neutral treatment of capital gains from the sale of certain business assets (as provided in section 6b of the Income Tax Code (ITC)) will be extended by another year if the related tax-free reserve otherwise is eliminated in fiscal year 2022 (generally, a four-year reinvestment period applies).
- Non-interest bearing payables with a term of longer than 12 months no longer will be required to be discounted at an annual 5.5% rate for fiscal years ending after 31 December 2022 (section 6 (1) number 3 ITC).

The final bill still must be signed by the president and published in the federal gazette to become effective.

See also tax@hand – June 10, 2022

Hong Kong

Proposed refinements to Hong Kong's foreign source income exemption regime for passive income

The Hong Kong government has recently released a consultation paper on the proposed refinements to Hong Kong's foreign-source income exemption regime (FSIE) regime for passive income in order to address the European Union's concern. Under the proposed FSIE regime, offshore passive income including interest, income from intellectual properties (IP), dividends and disposal gains in relation to shares or equity interest (collectively referred to as "offshore passive income") would be deemed to be sourced from Hong Kong and chargeable to profits tax, if:

- the income is received in Hong Kong by a constituent entity of a multinational enterprise (MNE) group2; and
- the recipient entity fails to meet the economic substance requirement (for non-IP income), or fails to comply with the nexus approach (for IP income).

In other words, in-scope offshore passive income will continue to be exempt from tax if certain conditions under the refined FSIE regime are met. Offshore active income will still be considered non-taxable under the existing Inland Revenue Ordinance. Source of profits will continue to be determined based on the prevailing principles. The refined FSIE regime will not be applied to individual taxpayers.

See also Hong Kong Tax Newsflash - June 22, 2022 (See page 5 for English version).

Proposed tax concessions for shipping-related activities

A new tax concession for maritime businesses will be introduced to the Hong Kong SAR (HKSAR) Legislative Council on June 15, 2022. The Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-Related Activities) Bill 2022 seeks to give profits tax concessions to certain ship agents, ship managers, and ship brokers (collectively "shipping commercial principals"). Subject to enactment of the legislation, the proposed tax concessions would apply to income received or accrued on or after April 1, 2022.

See also tax@hand - June 9, 2022

New Zealand

Consultation on the disputes resolution process launched

The disputes process is an uncertain time for any taxpayer that finds themselves embroiled in a tax dispute, often having to deal with concepts, terms, and processes that most will not have encountered previously. The New Zealand Inland Revenue has published an 83-page draft Standard Practice Statement, ED0240 – Disputes Process (the SPS) for public consultation. The SPS combines SPS 16/05 (Disputes resolution process commenced by the Commissioner of Inland Revenue) and SPS 16/06 (Disputes resolution process commenced by a taxpayer) and sets out each phase of the disputes process, detailing the rights and requirements of both the taxpayer and the Commissioner of Inland Revenue.

The SPS is intended to be not only an amalgamation of the old SPS 16/05 and SPS 16/06, but also incorporates some recent legislative changes and clarifies certain aspects of the policy behind the disputes process. Once finalized, the SPS will replace both SPS 16/05 and SPS 16/06.

The deadline for comments on the draft SPS is June 24, 2022.

See also tax@hand - June 8, 2022

Taiwan

Draft rules for investment tax credit for biotech and pharmaceutical companies issued

On May 30, 2022, Taiwan's Ministry of Economic Affairs (MOEA) announced draft rules governing the tax credit for biotech and pharmaceutical companies investing in brand new machinery, equipment, or system. This is in relation to the amended Biotech and Pharmaceutical Industry Development Act promulgated on December 30, 2021, which provides for a new investment tax credit for qualified biotech and pharmaceutical companies that make such investments for the purpose of manufacturing. When the investment amount is at least NTD 10 million and up to NTD 1 billion in the same taxable year, it may be credited against the taxpayer's corporate income tax amount.

See also tax@hand – June 14, 2022

United Arab Emirates

Consultation document outlines proposed corporate tax regime

As part of the public consultation published on April 27, 2022 by the United Arab Emirates (UAE) Ministry of Finance (MoF) on the introduction of a federal corporate tax on business profits for financial years starting on or after June 1, 2023, a consultation document was released that contains information on the proposed corporate tax regime. The key features are summarized in the articles below.

See also tax@hand - April 28, 2022 and tax@hand - April 29, 2022

United Kingdom

Spring Statement 2022: Signposting future changes

On March 23, 2022, the UK Chancellor of the Exchequer, Rishi Sunak, delivered his Spring Statement. The key measures were characterized by helping consumers with the cost of living and taking steps towards reducing energy consumption and reliance on fossil fuels. However, decisions affecting businesses were largely deferred until the autumn budget, with the chancellor identifying key areas the government will be consulting on over the next few months.

The Chancellor took the opportunity of the Spring Statement to reiterate his intention to focus on incentivizing training, innovation, and investment. The 'Spring Statement Tax Plan' released on the day gives us some indication of what this might entail, with focus on three areas, which are summarized in the articles below.

See also tax@hand - April 4, 2022and tax@hand - April 14, 2022

HM Treasury invites views on capital allowances reform

On May 9, 2022, Her Majesty's (HM) Treasury issued a policy paper inviting views on reforming the UK's capital allowances regime. At the Spring Statement in March 2022, the Chancellor of the Exchequer, Rishi Sunak, published his Tax Plan in which the government confirmed that it is considering reforms to further incentivize businesses to invest in productivity-enhancing assets once the temporary super-deduction comes to an end in April 2023. Options under consideration include:

- Increasing the permanent level of the annual investment allowance (AIA): The level of the AIA is due to revert to its default level of GBP 200,000 per year as from April 2023. One option could be a permanent increase to, for example, GBP 500,000 per year.
- Increasing the current writing down allowance rates: For example, increasing the relief rates for main pool and special rate pool expenditure from 18% and 6% currently to 20% and 8%, respectively.
- Reintroducing first year allowances (FYAs): Increased writing down rates in the year expenditure on plant and machinery is incurred, for example, 40% FYAs for expenditure on main pool plant and machinery.

- Introducing "additional first year allowances:" For example, 20% FYAs in addition to standard writing down allowances, bringing the overall amount relieved over time to more than 100% of the initial cost; or
- Introducing full expensing: The costliest option, allowing businesses to write off the costs of qualifying investments, uncapped, in the year expenditure is incurred.

The paper notes the GBP 11 billion annual cost to the Exchequer that full expensing would entail, and invites views on whether, if this level of funding were available, it would be better spent by government through other targeted options. HM Treasury also is seeking evidence from businesses on how they make capital investment decisions and how the current capital allowances regime, including the super-deduction, affects such decisions. Responses are invited by July 1, 2022.

See also tax@hand - May 19, 2022

Domestic start date for Pillar Two global minimum tax rules deferred

HM Treasury have confirmed that the start date for the OECD Inclusive Framework's global minimum tax (Pillar Two) in the UK will be for accounting periods beginning on or after December 31, 2023. This is later than the original proposed date of April 2023, and is intended to bring the UK in line with the likely implementation date in other countries, particularly in the European Union.

They also clarified that the rules will apply to accounting periods starting after the implementation date with no need to split periods that straddle it.

Draft legislation is expected to be published in summer 2022.

See also tax@hand – June 20, 2022

Temporary Energy Profits Levy on oil and gas firms

On May 26, 2022, the Chancellor of the Exchequer announced a £15 billion package of government support for energy bills. This will be partly funded by a new temporary Energy Profits Levy, a 25% surcharge on the extraordinary profits of the oil and gas sector. The government issued draft legislation on June 21, 2022 seeking technical feedback. This consultation will close on June 28, 2022, following which the tax is expected to be enacted over the summer. This is not yet substantially enacted for US GAAP purposes.

The Energy Profits Levy is an additional 25% tax on UK oil and gas profits on top of the existing 40% headline rate of tax, taking the combined rate of tax on profits to 65%. In addition, companies will not be able to offset previous losses or decommissioning expenditure against profits subject to the levy. The government have confirmed that if oil and gas prices in the UK return to historically more normal levels, the Government will phase out the Energy Profits Levy, therefore, the legislation includes a sunset clause to effectively end on or before December 31, 2025.

See also taxscape.deloitte – May 27, 2022

Multinational top up tax: Draft legislation on Pillar Two published

On July 20, 2022, Her Majesty’s Revenue & Customs (HMRC) published draft legislation and an explanatory note in respect of the UK’s domestic implementation of an income inclusion rule, which forms a key part of the OECD/G20 Inclusive Framework on BEPS' (“inclusive framework’s") minimum tax (Pillar Two) rules. The government also published its responses to feedback received from businesses as part of the consultation earlier in 2022.

This follows the political agreement on the components of global tax reform, agreed by more than 135 members of the inclusive framework in October 2021, and the publication by the inclusive framework of model rules for Pillar Two in December 2021 and commentary in March 2022.

See also tax@hand- July 21, 2022

United States

Still no meeting of minds on Build Back Better

As US lawmakers returned to Capitol Hill on April 25, 2022 following their two-week spring recess, West Virginia Democratic Sen. Joe Manchin offered a few details about what he would like to see in a modified version of the Build Back Better Act, the expansive tax-and-spending plan that congressional Democratic leaders hope to move under fast-track budget reconciliation procedures. However, Manchin's priorities appear to be difficult to square with those of other Senate Democrats and by week's end there continued to be considerable doubt about whether even a slimmed-down bill could reach President Biden's desk before Congress runs out of time in this election year.

Meanwhile, there were more durable signs of progress the week of 25 April on bipartisan efforts to expand retirement security protections.

House taxwriters approve budget views and estimates

The House Ways and Means Committee on 28 April approved by voice vote a "budget views and estimates" letter for fiscal year 2023 identifying the committee's legislative priorities for those areas of the federal budget that fall within its jurisdiction.

The letter, which is required under the Congressional Budget Act of 1974, will be sent to the House Budget Committee as that panel gets ready to develop its fiscal year 2023 budget resolution in the coming weeks. (Other House committees will send their own views and estimates letters to the Budget panel outlining their respective priorities. It is not expected the House and Senate will adopt matching budget resolutions during the year that would be necessary to unlock another round of budget reconciliation.)

On tax policy, the Ways and Means letter broadly reiterates the Biden administration's legislative agenda, noting that the panel "will prioritize tax policies that benefit middle class families and those working to climb into the middle class," with a specific emphasis on "infrastructure investment, retirement savings, workforce development, access to higher education, and small business growth." The panel also "will continue to review other tax matters, including full and fair administration of the tax laws by the Internal Revenue Service . . . and will closely review the revenue recommendations contained in the president's fiscal year 2023 budget," the letter states.

Finance panel to examine laws and enforcement governing the political activities of tax-exempt entities

The Senate Finance Subcommittee on Taxation and IRS Oversight announced that it will hold a hearing on 4 May at 2:00 p.m. to address laws and enforcement governing the political activities of tax-exempt entities.

The witness list as of publication time includes Philip Hackney of the University of Pittsburgh School of Law; Bradley A. Smith of the Institute for Free Speech; Ann M. Ravel, formerly of the Federal Election Commission; and Scott Walter of the Capital Research Center.

See also tax@hand – April 29, 2022 and tax@hand – June 11, 2022

Senate-approved "motion to instruct" calls for preserving expensing of research costs

A nonbinding measure calling on conferees to a US House-Senate conference committee on China competitiveness legislation to include language in any conference agreement preserving full and immediate expensing of research and experimentation costs was approved by the Senate on May 4, 2022 on a bipartisan 90-5 vote.

See also tax@hand – May 7, 2022

Inflation dominates discussion as taxwriters quiz Yellen on FY 2023 budget proposals

The recent spike in inflation in the US—and what the Biden administration intends to do about it—took center stage the week of June 6, 2022 as the two congressional taxwriting committees held separate hearings with Treasury Secretary Janet Yellen to discuss the White House's budget proposals for fiscal year 2023; but Yellen also fielded questions on a range of issues such as a pending global tax pact, the federal tax gap, retirement security, and the federal debt ceiling.

See also tax@hand – June 11, 2022 and tax@hand – June 18, 2022

Did you know

The following section contains information that may be relevant at the date of publication.

Colombia

DIAN clarifies taxation of private equity funds

Colombia's National Tax Administration, the Dirección de Impuestos y Aduanas Nacionales (DIAN) has clarified various aspects of the taxation of private equity funds. The clarification was issued on September 6, 2021 in response to an official request by a taxpayer and published on the DIAN's website in March 2022. The DIAN specifically addresses the contribution of goods and rights in kind to a private equity fund, the application of withholding tax on lease income received by a fund, the eligibility of private equity funds for the provisions of tax treaties, and the application of withholding tax on dividend distributions made by a fund.

See also tax@hand - March 31, 2022

Finland

CJEU rules Finnish investment fund tax exemption violates free movement of capital

On April 7, 2022, the Court of Justice of the European Union (CJEU) ruled in case C-342/20 that Finnish tax legislation requiring that an investment fund must be contractual based to qualify as tax-exempt violates the free movement of capital.

This judgment clarifies that the mere legal form of an investment fund does not justify different tax treatment, as such a distinction violates article 63 TFEU. The CJEU had earlier ruled (C-480/19) that for a Finnish resident individual a distribution of income by a Luxembourg SICAV fund (a form of collective investment vehicle) should be taxed similarly to income received from a Finnish domestic fund.

In addition to French SCPIs and Luxembourg SICAVs, other foreign collective investment vehicles also should more easily be entitled to tax exemption in Finland as the legal form of the fund should in itself no longer be an obstacle.

See also tax@hand - April 13, 2022

France

CJEU rules French dividend tax scheme with advance tax payments incompatible with PSD

On May 12, 2022, the Court of Justice of the European Union (CJEU) issued its judgment in *Schneider Electric SA & others* (C-556/20, currently not available in English), a case concerning the former French system of taxation of dividends in a chain of companies, consisting of tax credits (known as *"avoir fiscal"*) and corresponding advance payments where the profits underlying the distribution had not been taxed or had been taxed only partially at the level of the distributing company (known as "*précompte mobilier*"). The CJEU did not follow the Advocate General's October 2021 opinion and held that the system of advance tax payments was contrary to the EU parent-subsidiary directive (PSD).

See also tax@hand - May 18, 2022

Germany

Separate share acquisitions combined in determining participation exemption threshold

In a decision dated October 13, 2020 and published on April 21, 2022, Germany's lower tax court of Saxony ruled that separate share acquisitions in a given year should not be considered separately when determining whether the required 10% minimum shareholding is met for purposes of the participation exemption for dividends.

The ruling of the lower tax court provides welcome clarity on the question as to how the required 10% minimum shareholding that is acquired during a calendar year must be determined for purposes of the participation exemption rules. Affected taxpayers that have been subject to dividend taxation because the participation exemption rules were denied in a comparable situation should carefully reconsider the facts of their case and consider filing an objection against the relevant assessments.

See also tax@hand - April 28, 2022

Lower tax court treats cryptocurrency gains as taxable income

In a decision dated November 25, 2021, which was published in May 2022, Germany's lower tax court of Cologne confirmed the tax authority's view on the taxation of cryptocurrency gains and ruled that a capital gain from the sale of cryptocurrencies qualifies as "other income" under section 23 (1) no. 2 of the income tax code (ITC). The decision of the lower tax court of Cologne confirms a similar decision of the lower tax court of Baden-Wuerttemberg dated June 11, 2021 and is in line with the June 17, 2021 draft Ministry of Finance (MoF) decree on the tax treatment of virtual currencies and tokens.

The decision of the lower tax court of Cologne is the third decision of a lower tax court that confirms the view of the tax authorities on the nature of cryptocurrency gains (in addition to the rulings from the lower tax courts of Cologne and Baden-Wuerttemberg, a similar ruling was issued in 2019 by the lower tax court of Berlin-Brandenburg). Only the lower tax court of Nuremberg in a 2020 interim court order expressed doubts on the asset qualification of cryptocurrencies for purposes of section 23 (1) no. 2 ITC.

An appeal against the decision of the lower tax court of Cologne is currently pending at the federal tax court and hopefully will give the federal tax court a chance to rule on this controversial topic.

See also tax@hand - May 6, 2022

Contribution and repayment deemed a loan waiver resulting in COD income

Germany's lower tax court of Duesseldorf in a decision dated December 22, 2021 and published in May 2022 ruled that a structure to avoid cancellation of debt (COD) income was abusive pursuant to the general anti-avoidance rule (GAAR) under section 42 (2) of the General Tax Code. The court determined that a shareholder's contribution to its wholly owned German limited liability company (GmbH) and immediate repayment of the GmbH's payables to the shareholder qualified as a waiver of the payables, which resulted in COD income at the level of the GmbH to the extent the amount of the payables was deemed to be impaired, i.e., exceeded the value of the shareholder's equity in the GmbH.

This case touches on a common issue that arises when an over-indebted subsidiary has significant payables to its shareholders or other related parties. Solving the over-indebtedness issue requires careful planning based on certain considerations as described in the decision of the lower tax court and similar decisions of other tax courts (e.g., actual movement of cash, unrestricted discretion of a company over the funds received from its shareholder, etc.).

See also tax@hand - May 23, 2022

Greece

PEs of EU/EEA companies eligible for capital gains participation exemption

Greece's Independent Authority for Public Revenue (IAPR) on June 2, 2022 issued Circular E. 2047/02-06-2022, which further clarifies that the corporate income tax exemption for capital gains from the sale of shares applies when the beneficial owner of the income is a Greek permanent establishment (PE) of a foreign entity based in the EU or a European Economic Area (EEA) country. The circular complements the guidance provided in Circular E. 2057/12.03.2021, issued on March 12, 2021.

The Greek participation exemption rules are found in article 48A of Law 4172/2013 (the Greek Income Tax Code). For a share transfer to qualify for the exemption, a Greek tax resident must transfer shares in an EU entity and must have held at least a 10% participation (by value or shares) in the share capital, core capital, or voting rights of the legal entity whose shares are being transferred for an uninterrupted period of at least 24 months.

See also tax@hand – June 10, 2022

Hong Kong

Profits from interposed Hong Kong trading business not taxable

Hong Kong's Court of First Instance (CFI) released its decision in *Newfair Holdings Limited v. Commissioner of Inland Revenue* (2022 HKCFI 1133) on April 20, 2022. The CFI overturned the decision of the Board of Review (BoR) (D14/20) and ruled that the trading profits of an interposed Hong Kong company were not taxable in Hong Kong in a case where the company had a Hong Kong bank account and registered address but no physical operations or staff in Hong Kong. In determining the taxpayer's chargeability to tax for purposes of section 14 of the Inland Revenue Ordinance (IRO), the CFI ruled that only the profit-generating activities and operations of the taxpayer should be considered and not the role of the taxpayer within the transaction structure.

It is not yet known if the IRD will appeal to a higher level of court. Although the CFI's decision was in favor of the taxpayer and aligned with established legal principles, it is expected that the IRD will continue to adopt a stringent approach in reviewing offshore claims. Companies having offshore operations or making offshore claims should periodically review their facts and circumstances. Professional advice should be obtained on whether their positions can be supported by this latest CFI decision.

See also tax@hand - May 17, 2022

India

Supreme Court ruling validates reassessment notices issued post 31 March 2021

India's Supreme Court on May 4, 2022 issued a long-awaited and highly significant decision that notices to reopen assessment or audit proceedings issued by the tax authorities under section 148 of the Income-tax Act, 1961 (ITA) during the period April 1 through June 30 2021 are deemed to be issued under amended provisions introduced by the Finance Act, 2021 (FA 2021) and applicable as from April 1, 2021. The notices are to be treated as show cause notices under the relevant amended provisions.

The case relates to an appeal made by the tax authorities against a decision of the Allahabad High Court involving 11 writ petitions but around 90,000 notices under section 148 were issued by the tax authorities in the period April 1 through June 30 2021, which have been the subject of more than 9,000 writ petitions before various High Courts. The Supreme Court's decision applies throughout India, requiring modifications to all previous High Court judgments and orders on this issue and affecting all pending writ petitions.

See also tax@hand - May 11, 2022

CBDT issues instructions to implement Supreme Court ruling on reassessment notices

On May 11, 2022, India's Central Board of Direct Taxes (CBDT) issued Instruction No. 1 of 2022 providing directions for the uniform implementation of the landmark Supreme Court ruling of May 4, 2022 on the validity of reassessment notices issued during the period April 1, 2021 through June 30, 2021.

The CBDT's instructions are intended to ensure implementation of the Supreme Court ruling in a uniform manner by the tax authorities. Taxpayers may wish to evaluate the appropriate action to be taken based on the specific circumstances of their own case, considering the provisions relating to reopening assessments and audits applicable as from April 1, 2021, particularly under section 149 of the ITA.

See also tax@hand - May 18, 2022

Indonesia

List of sectors eligible for investment under voluntary disclosure program issued

Regulation Number 196/PMK.03/2021 (PMK-196) regarding the voluntary disclosure program (VDP) for unreported assets issued by Indonesia's Minister of Finance (MoF) in December 2021 stipulates that the MoF will determine the natural resources processing and renewable energy sectors in which taxpayers may invest to fulfill the investment requirement under the VDP. On February 24, 2022, the MoF issued Decision Letter Number 52/KMK.010/2022 (KMK-52) providing the list of eligible sectors for investment. Under the VDP schemes (VDP I and VDP II), reduced tax rates are available where assets located in Indonesia or located outside Indonesia but repatriated to Indonesia are invested in certain investment instruments. Taxpayers that have declared their intention to invest in eligible projects or instruments must make the investment by September 30, 2023.

See also tax@hand - March 31, 2022

Regulation governing income tax and VAT treatment of financial technology issued

Law Number 7 of 2021 (Law on Harmonization of Tax Regulations) (UU HPP) allows the Indonesian Minister of Finance (MoF) to appoint a resident or nonresident party that is directly involved in or facilitates a transaction to withhold tax from payments made in connection with that transaction. Therefore, on March 30, 2022, the MoF issued Regulation Number 69/PMK.03/2022 (PMK-69) to regulate the income tax withholding (WHT) treatment of peer-to-peer lending (P2P lending) activities and the VAT treatment of the financial technology industry. PMK-69 enters into effect as from May 1, 2022. Companies engaged in the financial technology industry should review the regulation to ensure that they have the necessary infrastructure in place to implement the procedures required.

PMK-69 confirms that the interest received from the borrower is not income for the P2P lending company and when the interest is passed on to the lender, it is not the P2P lending company's expense. Therefore, the interest is not deductible in the P2P lending company's corporate income tax calculation.

See also tax@hand - April 29, 2022

Regulations governing VAT and income tax treatment of crypto asset trading issued

Regulation Number 68/PMK.03/2022 (PMK-68) confirming the VAT and income tax treatment of crypto asset trading in Indonesia is effective as from May 1, 2022 and includes a definition of relevant terms and types of crypto transaction covered; confirmation of the VAT, Article 22 income tax (in the form of withholding tax (WHT)), and income tax treatment of each type of transaction; procedures for appointment of a foreign crypto exchanger; and compliance obligations for exchangers. PMK-68 was issued by the Indonesian Minister of Finance (MoF) on March 30, 2022.

The exchanger is subject to corporate income tax at the standard rate of 22% and VAT at 11% on its income from services (trading commission or fees from e-wallets.)

See also tax@hand - May 2, 2022

Israel

Supreme Court ruling addresses tax rate on distributable profits element of gain

Israel's Supreme Court has ruled that, in accordance with the Encouragement of Capital Investments Law, an individual is entitled to a reduced capital gains tax rate of 15% on the gain attributable to the distributable profits component of the gain arising on a sale of unquoted shares. The court's decision in the case of Skemsky et al. was published on 16 August 2021 in respect of an appeal filed by the Jerusalem assessing office of the tax authorities against a decision of the Jerusalem District Court. The decision represents the first time that the Supreme Court has considered the issue of the capital gains tax rate applicable to the distributable profits component of a gain in a situation where an individual sells unquoted shares of a company that is an approved enterprise under the Encouragement of Capital Investments Law and, as discussed further below, taxpayers selling shares under similar circumstances may wish to review the distributable profits calculation for years for which the tax assessment has not yet been finalized.

As a result of the Supreme Court's judgment, taxpayers selling shares under similar circumstances may wish to carefully examine the distributable profits calculation and consider submitting revised financial and tax reports to the tax authorities where the calculation is missing, incomplete, or calculated at an incorrect tax rate. Taxpayers have four years from the year of submission to submit revised reports in cases where the tax assessment for the year has not yet been finalized; where the tax assessment for the year has been finalized, taxpayers may not submit revised reports.

See also tax@hand - April 21, 2022

Singapore

Update on initiatives to demonstrate good tax governance and tax risk management

Singapore companies may participate in three voluntary compliance initiatives offered by the Inland Revenue Authority of Singapore (IRAS) to help demonstrate good tax governance and tax risk management. The Goods and Services Tax (GST) Assisted Compliance Assurance Programme (ACAP), available since 2011, was joined by the Tax Governance Framework (TGF) and Tax Risk Management Control Framework for Corporate Income Tax (CTRM) as from February 17, 2022. Companies are strongly encouraged to adopt all three initiatives, although each initiative can be operated independently.

This article focuses on the TGF and CTRM, full details of which are available on the IRAS' webpages on tax governance and tax risk management, including the following schematic providing an overview of the frameworks:

See also tax@hand - April 27, 2022

Overview of tax treatment of appropriation of/conversion to trading stock

The Inland Revenue Authority of Singapore (IRAS) has published an e-Tax Guide on the income tax treatment of the appropriation of trading stock for non-trade or capital purposes and the conversion of non-trade or capital assets to trading stock as specified in sections 10J and 32A of the Income Tax Act (ITA), respectively, enacted on October 5, 2021 and applicable as from November 16, 2021. The provisions apply not just to companies but also to partnerships and sole proprietorships.

This article provides a summary of the key areas addressed by the guide, which was issued on April 5, 2022.

See also tax@hand - June 7, 2022

Taiwan

Draft amendments to regulations on investment in smart machines, 5G networks released

On May 10, 2022, Taiwan's Ministry of Economic Affairs announced draft amendments to the "Regulations Governing Application of Tax Credits for Corporate or Limited Partnership in Smart Machines and Fifth-Generation Mobile Networks (Regulations)." This follows the amendments to article 10-1 of the Statute for Industrial Innovation enacted on February 18, 2022 extending the tax credit for investments in smart machines or fifth-generation (5G) mobile networks through December 31, 2024 and incorporating cybersecurity products or services into the statute.

The draft amendments are subject to a 15-day public consultation period prior to being enacted. Highlights of the draft amendments are included within this article.

See also tax@hand - May 13, 2022

Example Disclosures

The following section contains example financial statement disclosures that may be considered relevant, in part or in whole, at the date of publication.

FASB Accounting Standards Codification (ASC or the "Codification") Topic 740, Income Taxes states that deferred tax liabilities and assets should be adjusted for the effect of changes in tax laws or rates in the period that includes the enactment date. Before enactment, financial statement preparers should consider whether potential changes represent an uncertainty that management reasonably expects will have a material effect on the results of operations, liquidity, or capital resources. If so, financial statement preparers should consider disclosing information about the scope and nature of any potential material effects of the changes. After enactment, when material, financial statement preparers should consider disclosing in Management's Discussion & Analysis (MD&A) the anticipated current and future impact on their results of operations, liquidity, and capital resources. In addition, financial statement preparers should consider disclosures in the critical accounting estimates section of MD&A, the footnotes to the financial statements, or both, to the extent that the changes could materially impact existing assumptions used in making estimates of tax-related balances.

Certain legislation that has been discussed in other sections of this document may lead to an adjustment to the deferred tax balances and current taxes payable recorded on an entity's books and, if material, may need to be disclosed in the company's financial statements. In addition, proposals to change tax laws, rules, regulations, and interpretations could impact an entity's accounting for income taxes in the future. In preparation for possible impacts of the changes in tax laws, companies should consider including disclosure of the impacts of these proposed changes in their financial statements or in MD&A.

The link below provides sample disclosures with respect to issues including but not limited to the US tax reform, indefinite reinvestment, and intra-entity transfers.

See Roadmap to Accounting for Income Tax and Deloitte Financial Reporting Alerts

Quick Reference Guide for Income Tax Rates

The following section includes a summary of combined tax rates applicable in jurisdictions with rate changes in 2022, the related dates of enactment, for US GAAP purposes, of certain income tax rate changes, and supplemental information with respect to certain jurisdictions.

For other jurisdictions see 2022 Global Tax Rates as well as a comparative table of 2017 – 2021 Global Tax Rates

Jurisdiction	Combined national/local rate (incl. surcharges, etc.)		Date the combined national/local rate enacted	Notes
	2021	**2022**	**National and Local**	
Colombia	31%	35%	Dec 27, 2019	A law enacted on December 27, 2019, reiterates the progressive reduction of the corporate income tax rate (CIT) 33% for taxable year 2019, to 32% for 2020, 31% for 2021, and 30% for taxable year 2022 and thereafter. However, the latest tax reform legislation (Law 2155 of 2021) enacted on September 14, 2021 increases the rate from 31% in 2021 to 35% as from 2022. A reduced rate of 20% applies to companies located in free trade zones. The 4% surcharge, which was abolished for 2019, was applicable when the taxpayer's income was equal to or exceeded COP 800 million (approximately USD 266,000).
France	26.5%–27.4% with surtax (revenue below € 250M) 27.5%–28.4% with surtax (revenue above € 250M)	25% - 25.83% with surtax	Dec 29, 2017/July 25, 2019 (See Note 1 for reduced rate for SMEs) and for the rates applicable for FYs opened as of Jan 1, 2021.	For FY 2020, 28%–28.9% with surtax for companies with revenue below € 250M. 31%–32% with surtax, for companies with revenue above € 250M (28% on the first € 500K of taxable income) For 2021, 26.5% (revenue below € 250M) and 27.5% (revenue above € 250M), plus surtax of 3.3% if applicable. For 2022, 25%, plus surtax of 3.3% if applicable. These rates do not include the impact of the CVAE, an annual local business tax that is considered an income tax under US GAAP.
Netherlands	15%–25%	15%–25.8%	January 1, 2022	The corporate income tax rate up to a taxable amount of €395,000 is 15% (2021: €245,000) and the rate for taxable profit exceeding €395,000 will be 25.8%.

Note 1:

A reduced rate of 15% applies to SMEs (i.e., micro, small, and medium-sized companies held directly or indirectly, at least 75% by individuals and with revenue below EUR 10 million for FY beginning from Jan 1,2021) on the first EUR 38,120 of taxable income.

For FY 2019, a 28% rate applied to the portion of income under EUR 500,000, and the 31% rate applied to taxable income exceeding this threshold for companies with a revenue below EUR 250 million (33.33% for companies with revenue of EUR 250 million or more following a legislation passed on 25 July 2019).

As from January 1, 2020, the rate is 15% where taxable income is under EUR 38,120.

The ordinary corporate rate applies for taxable income exceeding that threshold, are as follows:

- 28% in 2020, 26.5% in 2021, and 25% in 2022 for companies with revenue of less than EUR 250 million.
- 31% (or 28% for the first EUR 500,000 of taxable income) in 2020, 27.5% in 2021, and 25% in 2022 for companies with revenue of EUR 250 million or more.

A 3.3% surtax computed on the standard corporate income tax charge (after the deduction of a lump-sum amount of EUR 763,000) applies. Accordingly, the maximum aggregated corporate income tax rates reflecting the surtax should be as follows: 31% => 32.02%; 28% => 28.92%; 26.50% => 27.37%; 27.50% => 28.41%; and 25% =>25.83%.

Additional Resources

A Roadmap to Accounting for Income Taxes—This Roadmap includes all of Deloitte's interpretive guidance on the accounting for income taxes, combining the income tax accounting rules and implementation guidance from ASC 740 with Deloitte's interpretations.

Accounting for Income Taxes—Global Tax Developments archive

Accounting for Income Taxes Hot Topics archive—A quarterly publication that highlights certain recent tax and accounting developments that may have accounting for income taxes (ASC 740) implications.

Click to subscribe to receive Accounting for Income Taxes Hot Topics directly via email.

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Deloitte International Tax Source (DITS)—An online database featuring corporate, withholding and tax treaty rates and information for 66 jurisdictions worldwide.

Tax Accounting & Provisions Dbriefs Webcasts—A collection of live and archived Dbrief webcasts that give you valuable insights on important developments impacting financial reporting for taxes.

Tax Publications—Various tax publications issued by Deloitte to help clients stay informed on tax legislation and regulations and the potential impact on their businesses.

Deloitte COVID-19 hub—A collection of all the latest Deloitte content in relation to COVID-19.

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